

From: Simon Jones, Corporate Director of Growth, Environment and Transport

To: Georgia Foster, Cabinet Member for Community and Regulatory Services.

Subject: Public Rights of Way and Access Service Prioritisation of Definitive Map Modification Order Applications.

Key decision – 26/00018
It affects more than 2 Electoral Divisions

Classification: **Unrestricted**

Past Pathway of Report: Growth, Environment and Transport Cabinet Committee
5 May 2026

Future Pathway of Report: Cabinet Member Decision

Electoral Division: All

Summary: In response to a growing backlog of Definitive Map Modification Order (DMMO) applications as a consequence of legislative change, an amendment to the County Council's existing prioritisation policy is proposed that would promote user evidence based DMMO applications by allocating one user-based application for each documentary evidence-based application.

Recommendation(s):

The Cabinet Member for Community and Regulatory Services is asked to agree the proposed decision as shown as Appendix A.

1. Introduction

- 1.1 Over the past five years, KCC has seen a substantial rise in Wildlife and Countryside Act 1981 section 53 applications (Definitive Map Modification Order applications). This has resulted in a significant increase in the backlog of applications. As of 16 March 2026, 100 applications remain unallocated, i.e., they have not yet been assigned to a KCC officer for investigation and processing. Applications are currently processed in order of receipt.
- 1.2 A significant increase in the number of historic documentary evidence-based applications (referred to from this point on as documentary evidence applications) has lengthened the time between the submission and investigation of applications. This delay has a greater impact on user evidence-based applications as:
 - I. the quality of user evidence deteriorates over time as memory fades, and
 - II. applications usually relate to routes which were in use at the time of, or a short time before, the submission of an application. Their loss is more greatly felt by the users of the route.

- 1.3 By contrast, documentary evidence-based applications typically relate to routes that have not been used in living memory. The documentary evidence on which they rely does not deteriorate over time.
- 1.4 Because of the significant shift in the basis on which applications are made we are proposing a change to our Statement of Priorities so that user-based applications are promoted. This means taking them out of submission order so that for every documentary evidence-based application allocated, one user-based application would be allocated.

2. Background

- 2.1 Section 53 Applications. Any person may make an application to the County Council, as the Surveying Authority, under section 53 of the Wildlife & Countryside Act 1981, to amend the Definitive Map & Statement (DMS) to add, upgrade, downgrade, or delete a Public Right of Way. The County Council has a duty to investigate every application it receives. Investigation involves undertaking interviews with witnesses and landowners, documentary research and consultation, amongst other things. Our current policy is to deal with these applications in order of receipt except where:
 - the physical existence of the claimed route is threatened by development or,
 - the resolution of an application would enable the County Council to substantially improve public safety or
 - the claimed route may result in a significant improvement to the network or
 - determination of the application would involve substantially the same evidence as another application.

In such instances a case may be accelerated.

- 2.2 Cut-off-Date. In 2000, the Countryside and Rights of Way Act introduced a deadline, known as the 'cut-off date', for the recording of unrecorded public rights of way on the basis of historic evidence. After this date, originally specified as 1st January 2026, it would no longer be possible to record public rights of way on the basis of historic evidence, and those rights would effectively be lost. The purpose of this provision was to provide certainty to landowners, local authorities and users as to the nature and extent of public rights over land. Applications made on the basis of user evidence (over a period of at least twenty years) could continue to be made.
- 2.3 Over recent years, there has been much debate as to the merits, or otherwise, of the 'cut-off date', and many changes in policy, with the Government announcing (in early 2022) its intention to repeal the date altogether, before subsequently determining (in October 2023) to reinstate and extend it to 1st January 2031.
- 2.4 On 26th December 2024, the Government announced that the latest 'cut-off date' (set for 2031) would be repealed when parliamentary time allowed. In practical terms, this means (once repealed) that it will continue to be possible to submit applications to record public rights purely on the basis of documentary evidence. It is hoped that the repeal will result in a reduction in

the rate at which applications are being submitted and, in the longer term, the total number of applications made.

- 2.5 Backlog. Until the cut-off-date has been repealed, stakeholders are continuing to research and submit higher numbers of applications. The backlog of case work has increased as a result. As of 16 March 2026, there are 100 unallocated applications. The number of applications received fluctuates with 37 applications being received in 2020, 19 in 2021, 21 in 2022, 7 in 2023, 39 in 2024 and 41 received in 2025. The next application to be allocated was received in April 2021 indicating a backlog of just over 4 years. However, when considering that on average, 12-14 applications are determined each year, the reality is that the current backlog is nearer to eight years. A backlog of such length is comparable with if not shorter than many upper tier authorities.
- 2.6 Of the 100 applications awaiting allocation to an Officer, 78 are based upon pre-1949 documentary evidence with only 22 being based upon user evidence. This reflects a significant change in the basis on which applications had been made. Prior to the introduction of the cut-off date the majority relied on user evidence. It is this change that has prompted the KCC Public Rights of Way and Access Service to revisit the Statement of Priorities to see if it is still fit for purpose.
- 2.7 The rapid increase in applications has resulted in a lengthy backlog meaning that the gap between submission and investigation is much longer. This significantly affects user-based applications for two main reasons: -
1) the quality of user evidence deteriorates over time as memory fades.
2) the ways are/ were in use prior to the submission of an application and therefore their loss is more greatly felt by the users of the route.
- 2.8 Proposed amendment. Applications on the basis of documentary evidence are not impacted in the same way. With many of these applications, the ways have not been used in living memory and the evidence on which they rely will not deteriorate over time.
- 2.9 Appendix A sets out the current Statement of Priorities as it affects the Definitive Map & Statement; in summary the proposed amendment seeks to prioritise user-based applications by taking them out of sequence. It proposes that for every one documentary evidence-based application allocated, one user-based application will be allocated. Each type of application will still be allocated in order of receipt unless any of the reasons for accelerating apply as detailed at paragraph 2.1 above.
- 2.10 This will still ensure that the documentary evidence-based applications are investigated but this change in policy will decrease the delay in considering user-based applications.
- 2.11 Policy in this area is likely to be subject to further review following amendments made to legislation in the Deregulation Act 2015, that are still to be implemented. It was not considered appropriate to delay this KCC policy amendment, as there is still no indication as to when the Deregulation Act changes will be brought into effect.

3. Financial Implications

- 3.1 The proposal is cost neutral. It does not seek or require additional resource in order to be implemented.

4 Legal implications

- 4.1 The County Council is the Surveying Authority for Kent, responsible for the production of the Definitive Map and Statement and keeping it under continuous review. It is required to investigate and determine every duly made DMMO application received. Investigation involves undertaking interviews with witnesses and landowners, documentary research and consultation, amongst other things. It is an area of work that is subject to significant regulation and is often litigated.
- 4.2 The proposal does not change the processes and procedures followed that must comply with the relevant regulatory requirements. It simply seeks to amend the priorities applied by the Service, particularly in respect to those applications based on user evidence.
- 4.3 Applicants may seek a direction from the Secretary of State where the determination of an application has not commenced within a year of receipt, and the Secretary of State may direct that the authority determine an application within a specified period. That possibility is longstanding, is known to applicants and has on occasions been used by them. This has particularly been the case in recent years as backlogs have grown and the Secretary of State has demonstrated an increasing willingness to direct authorities.

5. Equality implications

- 5.1 An Equality Impact Assessment (EqIA) has been completed for this proposed change and formed part of the public consultation.
- 5.2 The EqIA indicates a net benefit from the proposed change in that applications based on use tend to be made by older applicants or are supported by evidence from elderly witnesses. It could be argued that the current system of prioritisation discriminates against more elderly applicants and witnesses whose evidence may be diminished as memory fades or, in the worst-case scenario, they pass away before the application is considered.

6. Conclusions

- 6.1 In response to increasing numbers of DMMO applications, particularly those based on documentary evidence, a change is proposed to the statement of priorities for the consideration of such applications. The amendment proposed would see one user-based application allocated for each documentary evidence-based application. This is because user evidence deteriorates over time as memory fades and those routes that are subject to such applications are generally in public use at the time of, or a short time prior, to the making of an application.

7. Recommendation(s):

7.1 The Cabinet Member for Community and Regulatory Services is asked to agree the proposed decision as shown as Appendix A.

8. Background Documents

- Equality Impact Assessment
- Consultation Report

9. Contact details

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